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July 14, 2011

Mr. Paul Bradshaw  
Post Office Review Coordinator  
Appalachian District  
P.O. Box 59992  
Charleston, WV 25350

Re: Closure of the Springdale, WV 25986 Post Office

Dear Mr. Bradshaw:

On behalf of the Concerned Citizens for the Springdale Post Office ("CCSDPO") and the citizens of the region surrounding Springdale, I hereby request that the USPS reconsider the proposed decision to close the Springdale, WV 25986 Post Office and to provide for proper procedures and studies as to the impact of the closure on the Springdale community for the following reasons:

1. The recent public hearing which was conducted at the Springdale Post Office on April 6, 2011 failed to meet minimum requirements for due process and the procedures required by law for closure of a Post Office pursuant to 39 USC §404 (b) (1):

(b)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.

Specifically, despite the requests of the CCSDPO, the public meeting was not scheduled at a time convenient for many business people, and the public meeting was therefore not representative of the concerns and impact of the Springdale community since many business people and individuals that work a considerable distance from Springdale were precluded from attending the public hearing. As a result, the notice of the public hearing was deficient. Other public hearings for closures of other local post offices were conducted on or after 6:00 p.m. in order to enable those that work to attend the public hearing;

2. Due process also requires not only a fair opportunity to be heard, but an open and impartial process to enable the United States Postal Service a fair and full hearing of the criteria to be considered in closure of a post office. CCSDPO submits that the public meeting which occurred was conducted in such a manner that debate was limited and those running the meeting evidenced a lack of open-mindedness and willingness to consider all relevant factors prior to making a decision regarding the closure of the Springdale Post Office. Instead, input was cut-off as to those in attendance and it was made clear that closure was a foregone conclusion;

3. Springdale is dependent upon its post office for mail service which serves as vital link for residents and businesses. It is clear the policies of USPS do not permit closure of all rural post offices solely for economic reasons. Some facilities, such as the Springdale Post Office, serve a vital and necessary link and are intended to be subsidized if they are operating at a deficit, to serve the needs of those in the local communities must be considered:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

39 USC § 101(b)(1).

The USPS has announced it must subsidize some small post offices in rural areas in order to meet the mission of the Post Office, enabling more profitable post offices to subsidize less profitable areas in rural areas to maintain the vital mission post offices like the Springdale Post Office serve;

4. While CCSDPO recognizes the need for the USPS to evaluate the closure of local post offices, we believe that due process and careful consideration must be followed in order to assure sound decisions are made consistent with the mission of the USPS and the needs of our communities. CCSDPO has provided a petition with over 94 signatures and considerable information to address the closure of the Springdale Post Office;

5. Significantly, 39 USC § 404 (b) (1) requires a careful study of the impact of the closure:

- (2) The Postal Service, in making a determination whether or not to close or consolidate a post office –
  - (A) shall consider –
    - (i) the effect of such closing or consolidation on the community served by such post office;
    - (ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

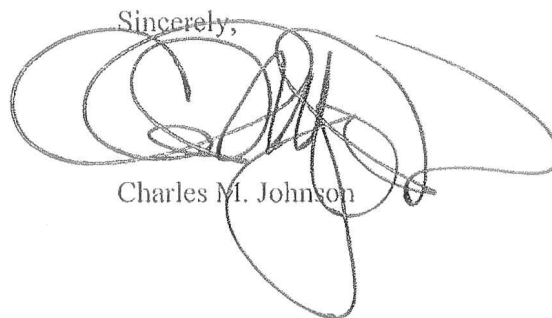
(iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;  
(iv) the economic savings to the Postal Service resulting from such closing or consolidation; and  
(v) such other factors as the Postal Service determines are Necessary...

Data used in the proposal was hastily gathered and the procedure to do so was flawed and incomplete. There were numerous inaccuracies in the proposal as a result. CCSDPO requests that the study be conducted anew with someone with considerable experience outside the area conducting a more thorough study so that once a decision is to be made regarding closure of the Springdale Post Office, sufficient data is available to address the relevant criteria for closure and the required citizen input is also obtained in a newly re-scheduled meeting;

I have attached further comments and concerns from the concerned Citizens for the Springdale Post Office for your review.

Please reconsider the recent actions taken as a part of the consideration process for closure of the Springdale Post Office. CCSDPO requests that the closure process be abandoned or a new study be conducted, that after gathering all appropriate data that a new public hearing be convened after 6:00 p.m. to allow local businesses and people that work an opportunity to air their concerns regarding the closure of the Springdale Post Office. Failure to do so will inevitably result in a denial of due process and a flawed decision. CCSDPO would be happy to meet with you, provide any further information you might need, and to propose a plan to conduct a further study and public hearing consistent with the requirements of the law and the needs of the local community. CCSDPO also requests that you advise CCSDPO of its rights to further due process regarding this decision.

Sincerely,

A handwritten signature in black ink, appearing to be "Charles M. Johnson", written over a large, loopy, circular flourish.

Charles M. Johnson

cc: Paul McClung, CCSDPO

Enclosure

Mr. Charles M. Johnson, Attorney at Law:

As previously discussed, we are providing you this six page document to offer our opinions relating to procedural discontinuance irregularities for the Spring Dale, WV post office.

There are two primary and distinct reasons that “The Concerned Citizens for the Spring Dale Post Office” (hereinafter referred to as CCSDPO) has been formed to contest the proposed discontinuance of our post office.

1. There is abundant evidence that warrants the need for a rural post office in the community of Spring Dale, WV. These reasons have been made known to the United States Postal Service (USPS) in detail by numerous replies to a pre-proposal questionnaire. (An attempt to participate in a public meeting for this purpose was futile.)
2. There is evidence that the USPS is more interested in going through the statutory motions required by law and policies to reach a predetermined conclusion than in recognizing their true motive is financial, and that the rights of the people are being abused and violated. The legitimate input and rights of the people, as provided by open meeting laws and the sunshine laws, are being responded to in a manner that will drastically interfere with the lives of customers and the health of their community.

As set forth in part 221h of USPS Hand Book PO-101, a letter dated January 31, 2011, from Teresa Price, Post Office Review Coordinator, directed Mrs. Patti Burwell, OIC for the Spring Dale, WV, post office (zip 25986) to complete a Windows Transaction Survey, Survey of Incoming Mail, and Survey of Dispatched Mail for a two-week period.

This unexpected event occurred suddenly and in unison with the intent of the USPS to close approximately 2,000 post offices nationwide, and 31 in this district for economic reasons (a deficit). Therefore, the actual motive for closure blatantly violates the intent of Title 39: Postal Service, part 241.3 – (Discontinuance of Post Offices). Part 243.1 sets forth a strict protocol to be followed so as to protect the rights of the public. In particular and relevant to small post offices is **39 USC 101 - Sec. 101. Postal Policy** which is quoted as follows:

*(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people.*

*The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people.*

*It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.*

*The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people. (b) The Postal Service shall provide a maximum*

degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.

No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

The significance of 39 USC 101 – sec 101 is underscored in the “**Post Office and Retail Postal Facility Closures: Overview and Issues for Congress**” by Kevin R. Kosar and dated August 7, 2009. In a bulleted list under “Issues and Possible Options for Congress” Mr. Kosar states, “Inherent to the current postal law is the assumption that some portions of the United States provide profitable markets for postal services, while others do not, and that the former should subsidize the latter. Thus, current law forbids the USPS from closing “small post offices solely for operating at a deficit,” and it requires the USPS to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining (39 U.S.C. 101(b)). The law does not forbid closures of large facilities located in suburban and metropolitan places. The USPS’s present facility closure proposal may steer clear of the law’s prohibitions. However, the USPS’s selection of facilities in metropolitan areas for closures may raise equity concerns in affected areas, especially if these urban areas already are subsidizing more rural places. The USPS and Congress may wish to devise some means to address possible complaints about equity.”

Another issue unsupported by Title 39 is relating the proposal to close with the retirement of the postmaster on 5/31/2009. She was replaced by a pleasant and competent OIC who worked with her at Spring Dale for 21 years. It seems clear that information on policies as provided in Handbook PO-101, part 212.4 and part 213.1 (Postmaster Vacancy) is being misused in a thinly veiled attempt to proceed with unjustifiable proposal investigations and the ultimate closure of many post offices, including the Spring Dale post office. The intent of 213.1 is unmistakable in that such abuse is to be avoided and is quoted as follows: “A Postmaster vacancy may lead to a decision to conduct a study for evaluating a post office workload and the needs for the community. However, the fact that an office is vacant does not, in and of itself, constitute justification to discontinue a post office.”

Part 242 (Justification for Discontinuance) consists of four examples to be considered as justification for discontinuance. Only item “c” (Postmaster Vacancy) is relevant and is in conflict with 212.4 and 213.1. This is further confirmed by a note at the end of these examples which reads in part, “In and of itself, any of the various conditions discussed in part 212 do not generally constitute justification for discontinuance...”

A significant result of the aforementioned surveys was a determination that windows transactions had decreased and therefore the OIC workload has declined. This is leveraged from the Postmaster Vacancy policy.

This is an unsubstantiated implication indicating Spring Dale has a unique loss of business, but in reality, this P.O. is unfairly singled out. It is well established in the media that the decline is

general and is nationwide. Furthermore, substantiating evidence for the Spring Dale post office is not provided to show graphically (or otherwise) our comparative actual rate and amount of decline as related to the state or national average. Additionally, there is no historical declination trend data provided for this location. There is evidence that the formula used to determine windows transaction data is unrealistic, and for a rural post office errs toward values favoring discontinuance. These issues render the second paragraph of the questionnaire she completed misleading, irrelevant, and inadequate.

With disregard to these facts, the United Postal Service moved forward with the discontinuance study (Pre-proposal Investigation).

A representative of Kevin Clark, (Manager, Post Office Operations) contacted the OIC at the Spring Dale post office by phone on or about March 23, 2011 concerning a date and time for a Community Meeting as required by Title 39. Later that day, certain postal customers, including local business owners, objected to the date, time, and place for the meeting. It was requested that the meeting be moved to a date, time, and place which enabled attendance after 5:00 p.m. The OIC immediately asked to have these aspects of the meeting changed, but was refused by Mr. Clark's office.

This is not in compliance with Handbook PO-101, part 262, **"Selecting Date and Location"** which is quoted in part as follows:

*"Discuss the time and location of the community meeting with the postmaster or OIC. Be sure to schedule the meeting at a time that encourages customer participation, such as during an evening or weekend. Potential community locations include a community center, church meeting room, city hall, school, or the Post Office. Designate a set time for the meeting, but be flexible enough to extend the meeting if necessary to answer customer questions."*

No changes in the meeting schedule were permitted at Spring Dale; however, a list of meeting times and locations, as made available to us by the office of Congressman Nick Joe Rahall, indicates meetings were held at 6:00 p.m. (after closing) for the Eccles, Amigo, Raleigh, Lanark, Glen White, Rhodell, Napier, Asbury, Eckman, Wayside, Elkhorn, JenkinJones, Hensley, Cass, Lahmansville, Norton, and Auburn post offices, all in WV.

The meeting was convened by Kevin Clark without consideration to date, time, and place. As indicated in the bulleted list below, there was significant abuse of the Sunshine Laws and Open Meeting as defined in §6-9A-1. (Declaration of legislative policy) of the WV Code.

- Repeated requests to audio record the meeting were denied by Mr. Clark. Though no attempt to record was repeated, we were again warned during meeting to not record. Mr. Clark apparently failed to realize that Handbook PO-101 does not permit him to record



our meeting, but nothing should prevent the public from making a audio recording, provided it is discreet and does not interfere with the meeting.

- Mr. Clark's opening remarks included demeaning comments concerning UPS, Fed EX etc. that were not appropriate and one customer who uses UPS and USPS services took exception to them.
- When Mr. Clark made his introductory statements, and several times thereafter, he was clear that the intent to close was based on profit. Even when the customers pointed that fact out to him, he never at any time denied it, and he was argumentative with several as to the profit based reason (deficient) to close this post office.
- Three customers informed Mr. Clark that the essence of the meeting was lost because his "secretary" was taking inadequate notes. Upon our questioning her (during the meeting) we noticed she seriously missed the impact and intent of many statements made by the people. We informed him and her that she was not using shorthand or any other method to adequately record important aspects of the meeting. In one case he rudely responded that our concern was duly noted. There can be no doubt that the official record does not portray or accurately express the in-depth concerns of the customers.
- We were informed that a summary of our comments and questionnaire results were to be made, and they were to be used by those who would make the closure decision. As mentioned herein, documentation of the meeting is not adequate for this. Additionally, we understand this data is to be compiled by Paul Bradshaw, who, with all due respect, had only two weeks' experience (as of April 11, 2011) in this regard. We understand Kevin Clark had only ten months' experience directly relative to detailed discontinuance procedures. (Those who make the final decisions will do so with incomplete, inaccurate data as a result of errors and lack of experience.)
- Before some people were finished with a comment, others were allowed to interrupt.
- The weather was nice; therefore, the meeting could have been held outside as suggested by us. People were "packed" into two rooms and those in the back room could not hear or speak, so as to appropriately respond or interact.
- Several people left because of overcrowding before having an opportunity to get involved or sign the roster.
- Mr. Clark appeared rude and unfair in regards to the OIC. She asked to speak several times, but was denied until nearly everyone left, and then he permitted others to interrupt her.
- On Thursday, April 28, Delegate David Perry attended a public meeting in Beckley, WV, pertaining to post office discontinuances. He indicated that during the meeting, Kelly Dyke spoke on behalf of Congressman Rahall's office and related her opinions commonly shared by us and other post offices in which Kevin Clark held meetings. She stated that generally Mr. Clark was overbearing, put the customers through indignant treatment, and read a seven point "conclusive" message to customers implying a dogmatic set of reasons to justify closures.

#### **§6-9A-1. Declaration of legislative policy.**

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

The West Virginia Supreme Court of Appeals has stated the goals of the Sunshine Law are promoting people awareness, public participation, and official accountability. *McOmas v. Board of Education of Fayette County*, 197 W.VA 188 (1996) at 196; also in the *McOmas* case the court ruled that *they should be given an expansive reading of the Open Meeting Act to achieve its far reaching goals, and that a narrow reading would frustrate the legislative intent and negate the purposes of the statute.*

Handbook PO-101, part 261 reinforces the intent of **§6-9A-1. Declaration of legislative policy** as follows:

#### *26 Conducting a Community Meeting*

##### **261 General**

*The community meeting is an excellent opportunity to explain service alternatives, to answer customer questions about the proposed alternatives, and to help customers complete their questionnaires. At the meeting, provide the customers with reasons for the proposed change in service. State the advantages and disadvantages for them and for the Postal Service (i.e., tell customers how their address will be affected and whether box fees will increase if they choose that service at a neighboring Post Office). Make it clear that no final decision has been made. Do not argue or raise your voice with customers. Always tell them the truth. If the answer to a customer's question is not apparent, obtain the customer's name and address and respond in writing after the meeting. Make notes of customer concerns and responses for inclusion in the official record. However, do not tape the meeting because this inhibits open discussion. Immediately terminate the meeting if it gets out of control.*

Clearly, the rights of the people are guaranteed in regard to attending and participating in a public meeting, and clearly those rights were prevented.

On March 18, 2011, 110 postal Service Questionnaires were received by the OIC to be placed in the 96 customer P.O. Boxes. The most significant source of confusion relative to these questionnaires is question #3 as follows: *"If you previously received carrier delivery, there will be no change of address to you delivery service – proceed to question 4. If you previously received Post Office box service or general delivery service, complete this section. How do you think carrier route delivery service compares to your previous service?"* The four choices were Better, Just as Good, No Opinion, and Worse. The question concluded with, *"If yes, explain:"* This question is obviously confusing, and several asked for clarification. This is excessively out of conformity with open meeting laws and the intent of PO-101, part 252.1. After the questionnaires were mailed back to the USPS, many customers informed the citizens group



(CCSDPO) that they later realized they had answered inaccurately. There are 17 replies noted in the official record as having "No Opinion" whereas, in reality, most if not all, would have indicated being "Unfavorable to Proposal." In all probability the official records should reflect 91 people out of 92 responses wish to keep the Spring Dale post office open. It is significant that out of 37 questionnaires completed by customers in the Nassau, MN example, 21 expressed no opinion (See PO-101, Exhibits 531 and 532.1). This raises into question that a persistent defect exists in the manner of seeking customer opinions as to an opinion in regard to alternate delivery methods. The inclusion within the PO-101 handbook of samples (Nassau and Popejoy) in regard to USPS responses further underscores the probability that the entire discontinuance is a predetermined means to justify a foregoing conclusion of discontinuance. The responses of these USPS examples closely resemble those for Spring Dale.

The public records additionally contain defects including, but not limited to, the following:

1. Total post office boxes at time of the survey was 96, not 88. This error is visible in several aspects of the proposal process. The total count of people who routinely use the Spring Dale post office greatly exceeds 96. These people received no questionnaire and are incorrectly absent from the total customer count.
2. The Community Meeting Roster indicates 57 people present. This is incorrect because several left due to overcrowding and before signing the roster.
3. The calculations indicating the amount of deficient reduction by adding carrier delivery is flawed in that 46 boxes will not be enough, and any expectation the remaining customers will open boxes in another post office is unrealistic. The "status quo" reduction in expense cannot correctly include the \$11,111 for fringe benefits. The suggestion that the lease (\$11,319) be renegotiated has been ignored. Additionally, the accuracy of the entire "form calculation" is questionable.
4. The Rainelle, WV post office should be considered an affected post office, but there is no proposal available for public review there.
5. The expectation that the Additional Comment Form will be completed is unrealistic. The customers seldom notice the posted proposal, and when they do, they consider their completion of the original questionnaire final and adequate. It would be a serious error to conclude that a limited number of additional comments implies acceptance to the responses of concerns as provided by the USPS. To the contrary, the vast majority of customers questioned by the citizens group are very dissatisfied with the responses to their concerns. The responses are considered irrelevant and merely a bureaucratic conformity to title 39 of the code.

Sincerely,

Paul McClung, Member CCSDPO